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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,871	09/12/2003	Eric Inselberg	0128-1 CON2	8970

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EXAMINER
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GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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2681

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/661,871	Applicant(s) INSELBERG, ERIC	
	Examiner Jean A Gelin	Art Unit 2681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/12/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-10 and 15-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Junkin, U.S. Patent No. 6,193,610 131.

Regarding claims 1, and 15 Junkin discloses a method for interactive audience participation at a live event attended by a plurality of spectators comprising the steps of: providing each of the spectators with an interactive device (40), wherein the interactive device presents a promotional message (50) and wherein the interactive device includes a user interface (42, 44) (col. 8, lines 6-15; col. 8, lines 49-52; col. 9, lines 41-47); querying the spectators, wherein answers to the querying may be entered by spectators via the user interface of the interactive device; (col. 6, lines 22-29; col. 10, lines 11-21 and lines 53-65); transmitting the answers to a central processor (col. 9, lines 49-54), storing the answers as spectator data (col. 6, lines 18-24; col. 10, lines 53-56), processing the spectator data into results (col. 6, lines 60-65; col. 6, lines 1-15), storing the

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results of the processing of the spectator data (col. 7, lines 3-6); and  
broadcasting the results of the processing of the spectator data (col. 9, lines 19-25; col.15, lines 9-22; col. 16, lines 17-20).

Regarding claim 2, Junkin discloses all the limitations of claim 1 and further discloses the method including the step of awarding prizes to at least one selected spectator who has answered the querying (col. 11, lines 1-11).

Regarding claims 3 and 4, Junkin discloses all the limitations of claim 1 and further discloses the method wherein the steps of querying and transmitting are achieved using wireless communications selected from the group consisting of radio transmissions, microwave transmissions, broadband wireline data transmission and satellite transmissions (col. 8, lines 37-44)

Regarding claims 5, 7, 8, 16, 18, and 19, Junkin discloses all the limitations of claim 1 and further discloses the method wherein the step of broadcasting the results is achieved using a large screen display (col. 8, lines 37-39).

Regarding claims 6, 9, 17, and 20, Junkin discloses all the limitations of claim 1 and further discloses the method wherein the step of broadcasting the results is achieved using the interactive device (col. 8, lines 16-19 and lines 58-62).

Regarding claim 10, Junkin discloses all the limitations of claim 1 and further discloses the method wherein the step of broadcasting the results includes the wireless transmission of data from the central processor to the

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interactive device for visual display thereon (col. 6, lines 10-14; col. 15, lines 9-22; col. 16, lines 17-20).

Regarding claim 21, Junkin discloses all the limitations of claim 1. Junkin further discloses an audio receiving circuit for receiving an audio signal at a predetermined frequency (col. 8, lines 49-52); providing audio transmission, whereby the spectators are furnished with audible programming (col. 8, lines 37-62).

Regarding claim 22, Junkin further teaches audible programming comprises play-by-play (inherently present in watching live event on tv, interactive game col. 9)

Regarding claim 23, Junkin further teaches information is transmitted wirelessly to the interactive devices (i.e., interactive apparatus includes air interface, col. 3, lines 54-65).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-14, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junkin, U.S. Patent No. 6,193,610 131 in view of Von Kohorn, U.S. Patent No. 5,916,024.

Regarding claims 11, 24, Junkin discloses an interactive device (col. 8, lines 6-15; col. 8, lines 49-52; col. 9, lines 41-47) for interactive audience participation at alive spectator event comprising: a housing including an electronic display opening; (col. 8, lines 35-44) a local microprocessor/controller being mounted within the housing; (col. 41, lines 4-8); a user interface comprising a plurality of keys in electrical communication with the microprocessor for manually entering data to the local microprocessor; (col. 8, lines 48-52); a transceiver means in electrical communication with the local microprocessor for transmitting and receiving data to and from the central processor (col. 8, lines 37-44 and lines 59-62; col. 9, lines 49-54); and an electronic display in electrical communication with the local microprocessor, the electronic display being mounted within the housing and being visible through the electronic display opening in the housing, and the electronic display being adapted to display data from the microprocessor (col. 8, lines 35-39).

Junkin fails to disclose that the interactive device is hand-held. However, in the same field of endeavor Von Kohorn discloses a hand-held interactive device for interactive audience participation at alive spectator event (col. 27, lines 13-17; col. 57, lines 35-40; col. 137, lines 31-34). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Junkin such that the interactive device is hand-held, as described by Von Kohorn, for the purpose of providing the user with the capability of using the interactive device with any television set/radio.

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Regarding claim 12, Junkin in view of Von Kohorn discloses all the limitations of claim 8. Junkin further discloses the hand-held device including means for presenting a promotional message (col. 7, lines 3-4)

Regarding claims 13 and 14, Junkin in view of Von Kohorn discloses all the limitations of claim 8. Junkin further discloses the hand-held device wherein the device utilizes wireless communications, selected from the group consisting of radio transmissions, microwave transmissions, broadband wireline data transmission and satellite transmission, for transmitting and receiving data from the central processor (col. 45, lines 10-19; col. 75, lines 54-55; col. 113, lines 13-18).

Regarding claim 25, Junkin in view of Von Kohorn discloses all the limitations of claim 8. Junkin further discloses user interface comprises a plurality of keys in electrical communication with the local microprocessor (col. 8, lines 35-47).

Regarding claim 26, Junkin in view of Von Kohorn discloses all the limitations of claim 8. Junkin further discloses user interface comprises at least one member selected of keypad, selection buttons (interactive device 40 inherently includes keypad and selection buttons for user to enter or select data, col. 8, lines 35-47).

Regarding claim 27, Junkin in view of Von Kohorn discloses all the limitations of claim 8. Junkin further discloses an audio receiving circuit for receiving an audio signal at a predetermined frequency (col. 8, lines 49-52);

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providing audio transmission, whereby the spectators are furnished with audible programming (col. 8, lines 37-62).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-21, 23, 24, and 27 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,434,398 and claims 1-2 of U.S. Pat. No. 6,650,903. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are drawn to interactive audience participation at a live event attended by a plurality of spectators.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A Gelin whose telephone number is (703) 305-4847. The examiner can normally be reached on 9:30 AM to 7:00 PM.



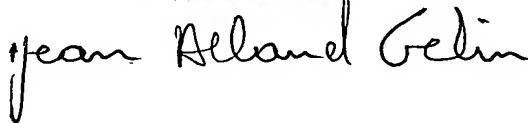
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (703) 306-0003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JEAN GELIN**  
**PRIMARY EXAMINER**

JGelin  
March 31, 2005

A handwritten signature in cursive script that reads "Jean Gelin". The signature is written in dark ink and is positioned to the right of the typed name and title.